

H. H. THORNTON AND BEN D. ROCHBLAIVE.

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APRIL 25, 1904.—Committed to the Committee of the Whole House and ordered to be printed.

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Mr. BEALL, from the Committee on Claims, submitted the following

REPORT.

[To accompany S. 3197.]

The Committee on Claims, to whom was referred the bill (S. 3197) for the relief of H. H. Thornton and Ben D. Rochblaiue, have had the same under consideration and now beg to report it back to the House and to recommend that it do pass.

As a part of this report there is incorporated from the report of the Senate Committee on Claims the following statement of facts:

[Senate Report No. 2142, Fifty-eighth Congress, second session.]

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On the 29th day of April, 1901, a judgment was entered in the United States circuit court, northern district of Florida, against D. G. Brent, as collector of customs, in a suit brought by the claimants under this bill, Messrs. Thornton and Rochblaiue, to recover damages sustained by reason of the seizure of the steam tug *Monarch*, which was the property of the plaintiffs. It appears that the tug was supposed by the Government to be carrying arms and ammunition to the Cuban revolutionists; and by direction of the Treasury Department the collector seized the tug and held her for some months, but being unable to secure sufficient evidence to justify her further retention released her.

The amount of the judgment aforesaid was \$1,113.75, which sum Congress subsequently appropriated (32 Stat. L., 24), but no provision was made for the payment of any interest thereon. Under section 8, act of August 23, 1842 (5 Stat. L., 518), such judgment bears interest from its date at such rate as is allowed by the statutes of the State wherein the court rendering the judgment is held.

Section 8 of the act of August 23, 1842, is as follows:

"SEC. 8. *And be it further enacted*, That on all judgments in civil cases hereafter recovered in the circuit or district courts of the United States, interest shall be allowed, and may be levied by the marshal, under process of execution issued thereon, in all cases where, by the law of the State in which such circuit or district court shall be held, interest may be levied under process of execution on judgments recovered in the courts of such State, to be calculated from the date of the judgment, and at such rate per annum as is allowed by law on judgments recovered in the courts of such State."

Your committee referred the bill (S. 3197) to the Department of Justice, and the following report was made thereon:

DEPARTMENT OF JUSTICE,  
Washington, D. C., January 18, 1904.

SIR: I am in receipt of your favor of the 13th instant, asking for an expression of my views with reference to the merits of Senate bill No. 3197, for relief of H. H. Thornton and Ben D. Rochblaive. In reply I beg to state that on April 29, 1901, a judgment was entered against D. G. Brent, as collector of customs, in a suit brought by Thornton and Rochblaive for the purpose of recovering damages by reason of the seizure of the steam tug *Monarch*, the property of the plaintiffs. On April 29, 1901, a judgment was entered in said suit against the collector for the sum of \$1,113.73, for which sum an appropriation was asked, and on February 14, 1902, provision was made therefor. (32 Stat. L., 24.) In the certified transcript of the judgment furnished this Department by the clerk of the court it appears that the judgment did not provide for interest, and accordingly Congress was not asked to appropriate therefor, said judgment appearing in the following words, to wit:

"Whereupon it is considered, ordered, and adjudged that the plaintiffs do have and recover of and from the defendant, D. G. Brent, the sum of \$1,113.73, together with the costs of this cause, taxed at the sum of \$38.50, and that they do have execution therefor."

In the bill which you submit it is stated that the judgment carried "interest at the rate of 8 per cent per annum until paid," though the bill asks an appropriation at the rate of 6 per cent per annum only. In judgments rendered against the United States in claims arising out of contracts, express or implied, the interest fixed by permanent law is at the rate of 4 per cent per annum from the date of the judgment to the date of the appropriation (1 Supp. Rev. Stat., 561, sec. 10), and as this is in effect a judgment against the United States I see no reason why any more should be allowed in this instance than in the case of other judgments against the Government.

In view of the fact that the judgment as certified to this Department bears no interest, I see no reason for the appropriation therefor, though if the committee considers him entitled thereto the rate should be at 4 per cent per annum from the date of the judgment to February 14, 1902, the date of the act providing for the original judgment.

Very respectfully,

H. M. HOYT,  
*Acting Attorney-General.*

HON. FRANCIS E. WARREN,  
*Chairman Committee on Claims United States Senate.*

Under the statutes of the State of Florida (in which State the judgment was recovered as aforesaid) "all judgments (and decrees) shall bear interest at the rate of 8 per cent per annum" (sec. 1176, Rev. Stat. Fla.). It is contended by the claimants that they are entitled to recover interest at the rate of 8 per cent per annum, although the unamended bill now reported by your committee calls for interest at the rate of 6 per cent per annum. Your committee understands that the claimants will accept interest computed at the rate of 4 per cent per annum; and in view of the fact that judgments against the United States in claims arising out of contracts, express or implied, carry interest at the rate of 4 per cent per annum from the date of the judgment to the date of the appropriation (1 Supp. Rev. Stat., 561, sec. 10), and that the judgment in question is in effect a judgment against the United States, your committee is of the opinion that 4 per cent interest should be allowed.